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29855 7590 07/11/2008 WONG, CABELLO, LUTSCH, RUTHERFORD & BRUCCULERI, L.L.P. 20333 SH 249 SUITE 600 HOUSTON, TX 77070			EXAMINER SAEED, USMAAN	
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* CHRISTOPHER Y. BLAICHER

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Appeal 2008-0131  
Application 10/618,500  
Technology Center 2100

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Decided: July 10, 2008

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Before JOSEPH L. DIXON, JEAN R. HOMERE, and JAY P. LUCAS,  
*Administrative Patent Judges.*

DIXON, *Administrative Patent Judge.*

DECISION ON APPEAL

This is a decision on appeal under 35 U.S.C. § 134 from the Examiner's final rejection of claims 1-63. Claims 64-69 have been withdrawn from consideration. We have jurisdiction under 35 U.S.C. § 6(b).

We REVERSE.

## BACKGROUND

Appellant's invention relates to reorganizing database objects using variable length keys. (Spec. 1). An understanding of the invention can be derived from a reading of exemplary claim 1, which is reproduced below.

1. A data sort method, comprising:

obtaining a plurality of data records and, for each data record  
extracting key information,

expanding the extracted key information, and

storing the expanded key information in a key record, wherein  
the expanded key information is not stored in intermediate  
storage;

sorting the plurality of key records based on the expanded key  
information;

reorganizing the plurality of data records to correspond to the order of  
the sorted plurality of key records; and

storing the reorganized plurality of data records without their  
associated expanded key information to a working storage.

## PRIOR ART

The prior art references of record relied upon by the Examiner in  
rejecting the appealed claims are:

Matsuda	US 5,247,665	Sep. 21, 1993
Ferguson	US 5,274,805	Dec. 28, 1993

Applicant's Admitted Prior Art (AAPA).

## REJECTIONS

Claims 1-12, 16-24, 27-37, and 40-52 are rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of Matsuda.

Claims 13-15, 25-26, 38-39, and 53-63 are rejected under 35 U.S.C. § 103(a) as being unpatentable over AAPA in view of Matsuda and further in view of Ferguson.

Rather than reiterate the conflicting viewpoints advanced by the Examiner and Appellant regarding the above-noted rejection, we refer to the Examiner's Answer (mailed Dec. 26, 2006) for the reasoning in support of the rejections, and to Appellant's Brief (filed Oct. 13, 2006) for the arguments thereagainst.

## OPINION

In reaching our decision in this appeal, we have carefully considered Appellant's Specification and claims, the applied prior art references, and the respective positions articulated by Appellant and the Examiner. As a consequence of our review, we determine the following.

### *35 U.S.C. § 103(a)*

Section 103 forbids issuance of a patent when 'the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains.'

*KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 1734 (2007).

In *KSR*, the Supreme Court emphasized "the need for caution in granting a patent based on the combination of elements found in the prior art," *Id.* at 1739, and discussed circumstances in which a patent might be determined to be obvious. *KSR*, 127 S. Ct. at 1739 (citing *Graham v. John Deere Co.*, 383 U.S. 1, 12 (1966)). The Court reaffirmed principles based on its precedent that "[t]he combination of familiar elements according to known methods is likely to be obvious when it does no more than yield predictable results." *Id.* The operative question in this "functional approach" is thus "whether the improvement is more than the predictable use of prior art elements according to their established functions." *Id.* at 1740.

The Federal Circuit recently recognized that "[a]n obviousness determination is not the result of a rigid formula disassociated from the consideration of the facts of a case. Indeed, the common sense of those skilled in the art demonstrates why some combinations would have been obvious where others would not." *Leapfrog Enters., Inc. v. Fisher-Price, Inc.*, 485 F.3d 1157, 1161 (Fed. Cir. 2007) (citing *KSR*, 127 S. Ct. 1727, 1739 (2007)). The Federal Circuit relied in part on the fact that Leapfrog had presented no evidence that the inclusion of a reader in the combined device was "uniquely challenging or difficult for one of ordinary skill in the art" or "represented an unobvious step over the prior art." *Id.* (citing *KSR*, 127 S. Ct. at 1740-41).

One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. *In re Merck & Co., Inc.*, 800 F.2d 1091, 1097 (Fed. Cir. 1986).

With respect to independent claim 1, from our review of the teachings of the AAPA and Matsuda, we agree with Appellant that the combined teachings of AAPA and Matsuda does not teach or fairly suggest the invention as recited in independent claim 1. From our review of AAPA figure 1, we find that the AAPA expressly teaches in step 110 that the variable length key fields are padded to a fixed length key fields of a size greater enough to accommodate any value that the key may assume and that once padded the record is written to an intermediate file. (Spec. 2). Therefore, we look to the teachings of Matsuda to find a teaching that teaches or fairly suggests not to store the padded key fields.

From our review of the teachings of Matsuda and the Examiner's rejection as stated in the Answer, we do not find a teaching or fair suggestion of not storing the expanded key information as recited in independent claim 1. In the Answer at page 5, the Examiner's rejection relies upon the teachings of Matsuda in the Abstract and column 6, the Examiner identified that the key fields are stored to "main memory" rather than any "intermediate storage." Here, the Examiner seems to take the teachings of Matsuda out of context with respect to the instant claimed invention and places more emphasis on the expressed labels of "intermediate" and "main" memory rather than the concept of whether or not the padded key information is stored as intended in the instant claimed invention.

Here, with an express teaching in the admitted prior art to store the padded key information, we do not find a sufficient teaching as identified by the Examiner to suggest that the padded key information should not be

stored. Therefore, we essentially find that the AAPA teaches away from not storing the padded key information which is used in the data sort method.

Therefore, we do not find that the Examiner has set forth a sufficient initial showing of obviousness of the claimed invention over the combination of the admitted prior art and Matsuda. Therefore, we will reverse the rejection of independent claim 1 and dependent claims 2-12, 17-24, 28-37, and 41-52.

We find similar limitations in independent claims 16, 27, and 40.

Therefore, we cannot sustain the rejection of these independent claims and their respective dependent claims. Additionally, we find similar limitations in independent claim 55 and the Examiner has relied upon the teachings of the admitted prior art and Matsuda in the same manner and additionally relies upon the teachings of Ferguson for additional limitations. We do not find that the Examiner has identified how the combination teaches or fairly suggests the invention as discussed above with respect to independent claim 1. Therefore, we find that the Examiner has not set forth a sufficient initial showing of obviousness of independent claim 55, and we will not sustain the rejection of independent claim 55 and dependent claims 56-63, 13-15, 25-26, 38-39, 53, and 54 for the reasons discussed above.

CONCLUSION

In summary, we have reversed the rejection of claims 1-63 under 35 U.S.C. § 103(a).

REVERSED

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